

AMENDED IN ASSEMBLY AUGUST 22, 2014

AMENDED IN ASSEMBLY AUGUST 13, 2014

AMENDED IN ASSEMBLY AUGUST 4, 2014

AMENDED IN ASSEMBLY JUNE 17, 2014

AMENDED IN SENATE JANUARY 14, 2014

AMENDED IN SENATE MAY 2, 2013

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 785

Introduced by ~~Senator Wolk~~ *Senators Wolk and Hill*

(Principal coauthor: Assembly Member Levine)

February 22, 2013

An act to repeal Sections 14661 and 14661.1 of the Government Code, to amend, repeal, and add Section 32132.5 of the Health and Safety Code, ~~and to amend Section 20209.14 of~~, to add and repeal Article 6 (commencing with Section 10187) of Chapter 1 of Part 2 of Division 2 of, to add and repeal Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of, to repeal Sections 20133, 20175.2, 20193, 20301.5, and 20688.6 of, and to repeal Article 22 (commencing with Section 20360) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, *to add Section 37.2 to the San Diego Unified Port District Act (Chapter 67 of the First Extraordinary Session of the Statutes of 1962), and to repeal Section 6 of Chapter 2 of the Second Extraordinary Session of the Statutes of 2009*, relating to design-build.

LEGISLATIVE COUNSEL'S DIGEST

SB 785, as amended, Wolk. Design-build.

Existing law authorizes the Department of General Services, the Department of Corrections and Rehabilitation, and various local agencies to use the design-build procurement process for specified public works under different laws. *Existing law also authorizes the formation of special districts, including the Marin Healthcare District and the San Diego Unified Port District.*

This bill would repeal those authorizations, and enact provisions that would authorize, until January 1, 2025, the Department of General Services, the Department of Corrections and Rehabilitation, and those local agencies, as defined, to use the design-build procurement process for specified public works. The bill would authorize, until January 1, 2025, the Marin Healthcare District to use the design-build process when contracting for the construction of a building and improvements directly related to a hospital or health facility building at the Marin General Hospital, and would authorize the San Diego Unified Port District to use the design-build procurement process for the construction of a building or buildings and improvements directly related to the construction of a building or buildings that exceed \$1,000,000. The bill would require specified information to be verified under penalty of perjury. By expanding the crime of perjury, the bill would impose a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Marin Healthcare District, District and for the San Diego Unified Port District.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to consolidate
- 2 existing design-build statutes and eliminate inconsistencies in

1 statutory language by adopting authority of general application to
2 identified agencies and repealing superseded sections.

3 SEC. 2. Section 14661 of the Government Code is repealed.

4 SEC. 3. Section 14661.1 of the Government Code is repealed.

5 SEC. 4. Section 32132.5 of the Health and Safety Code is
6 amended to read:

7 32132.5. (a) Notwithstanding Section 32132 or any other law,
8 upon approval by the board of directors of the Sonoma Valley
9 Health Care District or the Marin Healthcare District, as applicable,
10 the design-build procedure described in Chapter 4 (commencing
11 with Section 22160) of Part 3 of Division 2 of the Public Contract
12 Code may be used to assign contracts for the construction of a
13 building or improvements directly related to construction of a
14 hospital or health facility building at the Sonoma Valley Hospital
15 or the Marin General Hospital.

16 (b) For purposes of this section, *except where the context*
17 *otherwise requires*, all references in Chapter 4 (commencing with
18 Section 22160) of Part 3 of Division 2 of the Public Contract Code
19 to “local agency” shall mean the Sonoma Valley Health Care
20 District and the Marin Healthcare District.

21 (c) A hospital building project utilizing the design-build process
22 authorized by subdivision (a) shall be reviewed and inspected in
23 accordance with the standards and requirements of the Alfred E.
24 Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1
25 (commencing with Section 129675) of Part 7 of Division 107).

26 (d) This section shall remain in effect only until January 1, 2025,
27 and as of that date is repealed.

28 SEC. 5. Section 32132.5 is added to the Health and Safety
29 Code, to read:

30 32132.5. (a) Notwithstanding Section 32132 or any other
31 provision of law, upon approval by the board of directors of the
32 Sonoma Valley Health Care District, the design-build procedure
33 described in ~~Section 20133~~ Chapter 4 (commencing with Section
34 22160) of Part 3 of Division 2 of the Public Contract Code may
35 be used to assign contracts for the construction of a building or
36 improvements directly related to construction of a hospital or health
37 facility building at the Sonoma Valley Hospital.

38 (b) For purposes of this section, all references in ~~Section 20133~~
39 Chapter 4 (commencing with Section 22160) of Part 3 of Division
40 2 of the Public Contract Code to “county” and “board of

1 ~~supervisors~~ “local agency” shall mean the Sonoma Valley Health
2 Care District and its board of directors.

3 (c) A hospital building project utilizing the design-build process
4 authorized by subdivision (a) shall be reviewed and inspected in
5 accordance with the standards and requirements of the Alfred E.
6 Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1
7 (commencing with Section 129675) of Part 7 of Division 107).

8 (d) This section shall become operative January 1, 2025.

9 SEC. 6. Article 6 (commencing with Section 10187) is added
10 to Chapter 1 of Part 2 of Division 2 of the Public Contract Code,
11 to read:

12
13 Article 6. State Agency Design-Build Projects
14

15 10187. (a) The Legislature finds and declares that the
16 design-build method of project delivery, using a best value
17 procurement methodology, has been authorized for various
18 agencies that have reported benefits from such projects including
19 reduced project costs, expedited project completion, and design
20 features that are not achievable through the traditional
21 design-bid-build method.

22 (b) It is the intent of the Legislature that the following occur:

23 (1) This article provides general authorization for certain state
24 agencies to use design-build for projects, excluding projects on
25 the state highway system.

26 (2) This article shall not be deemed to provide a preference for
27 the design-build method over other procurement methodologies.

28 10187.5. For purposes of this article, the following definitions
29 *and the definitions in subdivision (a) of Section 13332.19 of the*
30 *Government Code shall apply:*

31 (a) “Best value” means a value determined by evaluation of
32 objective criteria ~~related that may include, but not be limited,~~ to
33 price, features, functions, life-cycle costs, experience, and past
34 performance. A best value determination may involve the selection
35 of the lowest cost proposal meeting the interests of the department
36 and meeting the objectives of the project, selection of the best
37 proposal for a stipulated sum established by the procuring agency,
38 or a tradeoff between price and other specified factors.

39 (b) “Construction subcontract” means each subcontract awarded
40 by the design-build entity to a subcontractor that will perform work

1 or labor or render service to the design-build entity in or about the
2 construction of the work or improvement, or a subcontractor
3 licensed by the State of California that, under subcontract to the
4 design-build entity, specially fabricates and installs a portion of
5 the work or improvement according to detailed drawings contained
6 in the plans and specifications produced by the design-build team.

7 (c) "Department" means the Department of General Services
8 and the Department of Corrections and Rehabilitation.

9 (d) "Design-build" means a project delivery process in which
10 both the design and construction of a project are procured from a
11 single entity.

12 (e) "Design-build entity" means a corporation, limited liability
13 company, partnership, joint venture, or other legal entity that is
14 able to provide appropriately licensed contracting, architectural,
15 and engineering services as needed pursuant to a design-build
16 contract.

17 (f) "Design-build team" means the design-build entity itself and
18 the individuals and other entities identified by the design-build
19 entity as members of its team. Members shall include the general
20 contractor and, if utilized in the design of the project, all electrical,
21 mechanical, and plumbing contractors.

22 (g) "Director" means, with respect to procurements undertaken
23 by the Department of General Services, the Director of General
24 Services or, with respect to procurements undertaken by the
25 Department of Corrections and Rehabilitation, the secretary of that
26 department.

27 10188. (a) Notwithstanding any other law, the director,
28 following notification to the State Public Works Board, may
29 procure design-build contracts for public works projects in excess
30 of one million dollars (\$1,000,000), awarding the contract using
31 either the low bid or best value, provided that this article shall not
32 apply to any projects on the state highway system.

33 (b) The director shall develop guidelines for a standard
34 organizational conflict-of-interest policy, consistent with applicable
35 law, regarding the ability of a person or entity, that performs
36 services for the department relating to the solicitation of a
37 design-build project, to submit a proposal as a design-build entity,
38 or to join a design-build team. This conflict-of-interest policy shall
39 apply to each department entering into design-build contracts
40 authorized under this article.

1 10190. The director shall notify the State Public Works Board
2 regarding the method to be used for selecting the design-build
3 entity, prior to advertising the design-build project.

4 10191. The procurement process for the design-build projects
5 shall progress as follows:

6 (a) (1) The director shall prepare a set of documents setting
7 forth the scope and estimated price of the project. The documents
8 may include, but need not be limited to, the size, type, and desired
9 design character of the project, performance specifications covering
10 the quality of materials, equipment, workmanship, preliminary
11 plans or building layouts, or any other information deemed
12 necessary to describe adequately the department's needs. The
13 performance specifications and any plans shall be prepared by a
14 design professional who is duly licensed and registered in
15 California.

16 (2) The documents shall not include a design-build-operate
17 contract for any project. The documents, however, may include
18 operations during a training or transition period but shall not
19 include long-term operations for any project.

20 ~~(b) Based on the documents prepared under subdivision (a), the~~
21 *The* director shall prepare and issue a request for qualifications in
22 order to prequalify or short-list the design-build entities whose
23 proposals shall be evaluated for final selection. The request for
24 qualifications shall include, but need not be limited to, the
25 following elements:

26 (1) Identification of the basic scope and needs of the project or
27 contract, the expected cost range, the methodology that will be
28 used by the department to evaluate proposals, the procedure for
29 final selection of the design-build entity, and any other information
30 deemed necessary by the director to inform interested parties of
31 the contracting opportunity.

32 (2) Significant factors that the department reasonably expects
33 to consider in evaluating qualifications, including technical design
34 and construction expertise, and all other nonprice-related factors.

35 (3) A standard template request for statements of qualifications
36 prepared by the department. In preparing the standard template,
37 the department may consult with the construction industry, the
38 building trades and surety industry, and other agencies interested
39 in using the authorization provided by this article. The template
40 shall require the following information:

1 (A) If the design-build entity is a privately held corporation,
2 limited liability company, partnership, or joint venture, a listing
3 of all of the shareholders, partners, or members known at the time
4 of statement of qualification submission who will perform work
5 on the project.

6 (B) Evidence that the members of the design-build team have
7 completed, or demonstrated the experience, competency, capability,
8 and capacity to complete projects of similar size, scope, or
9 complexity, and that proposed key personnel have sufficient
10 experience and training to competently manage and complete the
11 design and construction of the project, and a financial statement
12 that ensures that the design-build entity has the capacity to
13 complete the project.

14 (C) The licenses, registration, and credentials required to design
15 and construct the project, including, but not limited to, information
16 on the revocation or suspension of any license, credential, or
17 registration.

18 (D) Evidence that establishes that the design-build entity has
19 the capacity to obtain all required payment and performance
20 bonding, liability insurance, and errors and omissions insurance.

21 (E) Information concerning workers' compensation experience
22 history and a worker safety program.

23 (F) If the proposed design-build entity is a corporation, limited
24 liability company, partnership, joint venture, or other legal entity,
25 a copy of the organizational documents or agreement committing
26 to form the organization.

27 (G) An acceptable safety record. A proposer's safety record
28 shall be deemed acceptable if its experience modification rate for
29 the most recent three-year period is an average of 1.00 or less, and
30 its average total recordable injury or illness rate and average lost
31 work rate for the most recent three-year period does not exceed
32 the applicable statistical standards for its business category or if
33 the proposer is a party to an alternative dispute resolution system
34 as provided for in Section 3201.5 of the Labor Code.

35 (4) (A) The information required under this subdivision shall
36 be certified under penalty of perjury by the design-build entity and
37 its general partners or joint venture members.

38 (B) Information required under this subdivision that is not
39 otherwise a public record under the California Public Records Act
40 (Chapter 3.5 (commencing with Section 6250) of Division 7 of

1 Title 1 of the Government Code) shall not be open to public
2 inspection.

3 (c) A design-build entity shall not be prequalified or shortlisted
4 unless the entity provides an enforceable commitment to the
5 director that the entity and its subcontractors at every tier will use
6 a skilled and trained workforce to perform all work on the project
7 or contract that falls within an apprenticeable occupation in the
8 building and construction trades.

9 (1) For purposes of this subdivision:

10 (A) "Apprenticeable occupation" means an occupation for which
11 the chief had approved an apprenticeship program pursuant to
12 Section 3075 of the Labor Code prior to January 1, 2014.

13 (B) "Skilled and trained workforce" means a workforce that
14 meets all of the following conditions:

15 (i) All the workers are either skilled journeypersons or
16 apprentices registered in an apprenticeship program approved by
17 the Chief of the Division of Apprenticeship Standards.

18 (ii) (I) As of January 1, 2016, at least 20 percent of the skilled
19 ~~journey persons~~ *journeypersons* employed to perform work on the
20 contract or project by the entity and each of its subcontractors at
21 every tier are graduates of an apprenticeship program for the
22 applicable occupation that was either approved by the Chief of the
23 Division of Apprenticeship Standards pursuant to Section 3075 of
24 the Labor Code or located outside California and approved for
25 federal purposes pursuant to the apprenticeship regulations adopted
26 by the federal Secretary of Labor.

27 (II) As of January 1, 2017, at least 30 percent of the skilled
28 ~~journey persons~~ *journeypersons* employed to perform work on the
29 contract or project by the entity and each of its subcontractors at
30 every tier are graduates of an apprenticeship program for the
31 applicable occupation that was either approved by the Chief of the
32 Division of Apprenticeship Standards pursuant to Section 3075 of
33 the Labor Code or located outside California and approved for
34 federal purposes pursuant to the apprenticeship regulations adopted
35 by the federal Secretary of Labor.

36 (III) As of January 1, 2018, at least 40 percent of the skilled
37 ~~journey persons~~ *journeypersons* employed to perform work on the
38 contract or project by the entity and each of its subcontractors at
39 every tier are graduates of an apprenticeship program for the
40 applicable occupation that was either approved by the Chief of the

1 Division of Apprenticeship Standards pursuant to Section 3075 of
2 the Labor Code or located outside California and approved for
3 federal purposes pursuant to the apprenticeship regulations adopted
4 by the federal Secretary of Labor.

5 (IV) As of January 1, 2019, at least 50 percent of the skilled
6 ~~journey persons~~ *journeypersons* employed to perform work on the
7 contract or project by the entity and each of its subcontractors at
8 every tier are graduates of an apprenticeship program for the
9 applicable occupation that was either approved by the Chief of the
10 Division of Apprenticeship Standards pursuant to Section 3075 of
11 the Labor Code or located outside California and approved for
12 federal purposes pursuant to the apprenticeship regulations adopted
13 by the federal Secretary of Labor.

14 (V) As of January 1, 2020, at least 60 percent of the skilled
15 ~~journey persons~~ *journeypersons* employed to perform work on the
16 contract or project by the entity and each of its subcontractors at
17 every tier are graduates of an apprenticeship program for the
18 applicable occupation that was either approved by the Chief of the
19 Division of Apprenticeship Standards pursuant to Section 3075 of
20 the Labor Code or located outside California and approved for
21 federal purposes pursuant to the apprenticeship regulations adopted
22 by the federal Secretary of Labor.

23 (iii) For an apprenticeable occupation in which no apprenticeship
24 program had been approved by the chief prior to January 1, 1995,
25 up to one-half of the graduation percentage ~~requirement in~~
26 ~~subclause (I)~~ *requirements* of clause (ii) may be satisfied by skilled
27 *journeypersons* who commenced working in the apprenticeable
28 occupation prior to the chief's approval of an apprenticeship
29 program for that occupation in the county in which the project is
30 located.

31 (C) “~~Skilled journey person~~” *journeyperson*” means a worker
32 who either:

33 (i) Graduated from an apprenticeship program for the applicable
34 occupation that was approved by the chief or located outside
35 California and approved for federal purposes pursuant to the
36 apprenticeship regulations adopted by the federal Secretary of
37 Labor.

38 (ii) Has at least as many hours of on-the-job experience in the
39 applicable occupation as would be required to graduate from an

1 apprenticeship program for the applicable occupation that is
2 approved by the chief.

3 (2) An entity's commitment that a skilled and trained workforce
4 will be used to perform the project or contract may be established
5 by any of the following:

6 (A) The entity's agreement with the director that the entity and
7 its subcontractors at every tier will comply with the requirements
8 of this subdivision and that the entity will provide the director with
9 evidence, on a monthly basis while the project or contract is being
10 performed, that the entity and its subcontractors are complying
11 with the requirements of this subdivision.

12 (B) If the director has entered into a project labor agreement
13 that will bind all contractors and subcontractors performing work
14 on the project or contract and that includes the requirements of
15 this subdivision, the entity's agreement that it will become a party
16 to that project labor agreement.

17 (C) Evidence that the entity has entered into a project labor
18 agreement that includes the requirements of this subdivision and
19 that will bind the entity and all its subcontractors at every tier
20 performing the project or contract.

21 (d) Based on the documents prepared as described in subdivision
22 (a), the director shall prepare a request for proposals that invites
23 prequalified or short-listed entities to submit competitive sealed
24 proposals in the manner prescribed by the department. The request
25 for proposals shall include, but need not be limited to, the following
26 elements:

27 (1) Identification of the basic scope and needs of the project or
28 contract, the estimated cost of the project, the methodology that
29 will be used by the department to evaluate proposals, whether the
30 contract will be awarded on the basis of low bid or best value, and
31 any other information deemed necessary by the department to
32 inform interested parties of the contracting opportunity.

33 (2) Significant factors that the department reasonably expects
34 to consider in evaluating proposals, including, but not limited to,
35 cost or price and all nonprice-related factors.

36 (3) The relative importance or the weight assigned to each of
37 the factors identified in the request for proposals.

38 (4) Where a best value selection method is used, the department
39 may reserve the right to request proposal revisions and hold
40 discussions and negotiations with responsive proposers, in which

1 case the department shall so specify in the request for proposals
2 and shall publish separately or incorporate into the request for
3 proposals applicable procedures to be observed by the department
4 to ensure that any discussions or negotiations are conducted in
5 good faith.

6 (e) For those projects utilizing low bid as the final selection
7 method, the competitive bidding process shall result in lump-sum
8 bids by the prequalified or short-listed design-build entities, and
9 awards shall be made to the design-build entity that is the lowest
10 responsible bidder.

11 (f) For those projects utilizing best value as a selection method,
12 the design-build competition shall progress as follows:

13 (1) Competitive proposals shall be evaluated by using only the
14 criteria and selection procedures specifically identified in the
15 request for proposals. The following minimum factors, however,
16 shall be weighted as deemed appropriate by the department:

17 (A) Price, unless a stipulated sum is specified.

18 (B) Technical design and construction expertise.

19 (C) Life-cycle costs over 15 or more years.

20 (2) Pursuant to subdivision (d), the department may hold
21 discussions or negotiations with responsive proposers using the
22 process articulated in the department's request for proposals.

23 (3) When the evaluation is complete, the responsive proposers
24 shall be ranked based on a determination of value provided,
25 provided that no more than three proposers are required to be
26 ranked.

27 (4) The award of the contract shall be made to the responsible
28 design-build entity whose proposal is determined by the director
29 to have offered the best value to the public.

30 (5) Notwithstanding any other provision of this code, upon
31 issuance of a contract award, the director shall publicly announce
32 its award, identifying the design-build entity to which the award
33 is made, along with a statement regarding the basis of the award.

34 (6) The statement regarding the director's contract award,
35 described in paragraph (5), and the contract file shall provide
36 sufficient information to satisfy an external audit.

37 10192. (a) The design-build entity shall provide payment and
38 performance bonds for the project in the form and in the amount
39 required by the director, and issued by a California admitted surety.

1 The amount of the payment bond shall not be less than the amount
2 of the performance bond.

3 (b) The design-build contract shall require errors and omissions
4 insurance coverage for the design elements of the project.

5 (c) The department shall develop a standard form of payment
6 and performance bond for its design-build projects.

7 10193. (a) The department, in each design-build request for
8 proposals, may identify specific types of subcontractors that must
9 be included in the design-build entity statement of qualifications
10 and proposal. All construction subcontractors that are identified
11 in the proposal shall be afforded all the protections of Chapter 4
12 (commencing with Section 4100) of Part 1.

13 (b) Following award of the design-build contract, the
14 design-build entity shall proceed as follows in awarding
15 construction subcontracts with a value exceeding one-half of 1
16 percent of the contract price allocable to construction work:

17 (1) Provide public notice of availability of work to be
18 subcontracted in accordance with the publication requirements
19 applicable to the competitive bidding process of the department,
20 including a fixed date and time on which qualifications statements,
21 bids, or proposals will be due.

22 (2) Establish reasonable qualification criteria and standards.

23 (3) Award the subcontract either on a best value basis or to the
24 lowest responsible bidder. The process may include prequalification
25 or short-listing. The foregoing process does not apply to
26 construction subcontractors listed in the original proposal.
27 Subcontractors awarded construction subcontracts under this
28 subdivision shall be afforded all the protections of Chapter 4
29 (commencing with Section 4100) of Part 1.

30 10194. (a) If the department elects to award a project pursuant
31 to this article, retention proceeds withheld by the department from
32 the design-build entity shall not exceed 5 percent if a performance
33 and payment bond, issued by an admitted surety insurer, is required
34 in the solicitation of bids.

35 (b) In a contract between the design-build entity and a
36 subcontractor, and in a contract between a subcontractor and any
37 subcontractor thereunder, the percentage of the retention proceeds
38 withheld may not exceed the percentage specified in the contract
39 between the department and the design-build entity. If the
40 design-build entity provides written notice to any subcontractor

1 that is not a member of the design-build entity, prior to or at the
2 time the bid is requested, that a bond may be required and the
3 subcontractor subsequently is unable or refuses to furnish a bond
4 to the design-build entity, then the design-build entity may withhold
5 retention proceeds in excess of the percentage specified in the
6 contract between the department and the design-build entity from
7 any payment made by the design-build entity to the subcontractor.

8 10195. Nothing in this article affects, expands, alters, or limits
9 any rights or remedies otherwise available at law.

10 10196. This article shall remain in effect only until January 1,
11 2025, and as of that date is repealed.

12 SEC. 7. Section 20133 of the Public Contract Code is repealed.

13 SEC. 8. Section 20175.2 of the Public Contract Code is
14 repealed.

15 SEC. 9. Section 20193 of the Public Contract Code is repealed.

16 SEC. 10. Section 20209.14 of the Public Contract Code is
17 amended to read:

18 20209.14. (a) This article shall remain in effect only until
19 January 1, ~~2015~~, 2017, and as of that date is repealed.

20 (b) *This article shall only apply to transit operators that begin*
21 *a project solicitation before January 1, 2015. A transit operator*
22 *that begins a project solicitation on or after January 1, 2015, is*
23 *subject to Chapter 4 (commencing with Section 22610).*

24 ~~SEC. 10.~~

25 SEC. 11. Section 20301.5 of the Public Contract Code is
26 repealed.

27 ~~SEC. 11.~~

28 SEC. 12. Article 22 (commencing with Section 20360) of
29 Chapter 1 of Part 3 of Division 2 of the Public Contract Code is
30 repealed.

31 ~~SEC. 12.~~

32 SEC. 13. Section 20688.6 of the Public Contract Code is
33 repealed.

34 ~~SEC. 13.~~

35 SEC. 14. Chapter 4 (commencing with Section 22160) is added
36 to Part 3 of Division 2 of the Public Contract Code, to read:

CHAPTER 4. LOCAL AGENCY DESIGN-BUILD PROJECTS

22160. (a) The Legislature finds and declares that the design-build method of project delivery, using a best value procurement methodology, has been authorized for various agencies that have reported benefits from such projects including reduced project costs, expedited project completion, and design features that are not achievable through the traditional design-bid-build method.

(b) It is the intent of the Legislature that the following occur:

(1) This chapter provides general authorization for local agencies to use design-build for projects, excluding projects on the state highway system.

(2) This chapter shall not be deemed to provide a preference for the design-build method over other procurement methodologies.

22161. For purposes of this chapter, the following definitions apply:

(a) “Best value” means a value determined by evaluation of objective criteria ~~related that may include, but not be limited to~~ price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of the local agency and meeting the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring agency, or a tradeoff between price and other specified factors.

(b) “Construction subcontract” means each subcontract awarded by the design-build entity to a subcontractor that will perform work or labor or render service to the design-build entity in or about the construction of the work or improvement, or a subcontractor licensed by the State of California that, under subcontract to the design-build entity, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications produced by the design-build team.

(c) “Design-build” means a project delivery process in which both the design and construction of a project are procured from a single entity.

(d) “Design-build entity” means a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural,

1 and engineering services as needed pursuant to a design-build
2 contract.

3 (e) “Design-build team” means the design-build entity itself
4 and the individuals and other entities identified by the design-build
5 entity as members of its team. Members shall include the general
6 contractor and, if utilized in the design of the project, all electrical,
7 mechanical, and plumbing contractors.

8 (f) “Local agency” means the following:

9 (1) A city, county, or city and county.

10 (2) A special district that operates wastewater facilities, solid
11 waste management facilities, water recycling facilities, or fire
12 protection facilities.

13 (3) Any transit district, included transit district, municipal
14 operator, included municipal operator, any consolidated agency,
15 as described in Section 132353.1 of the Public Utilities Code, any
16 joint powers authority formed to provide transit service, any county
17 transportation commission created pursuant to Section 130050 of
18 the Public Utilities Code, or any other local or regional agency,
19 responsible for the construction of transit projects.

20 (g) (1) For a local agency defined in paragraph (1) of
21 subdivision (f), “project” means the construction of a building or
22 buildings and improvements directly related to the construction
23 of a building or buildings, county sanitation wastewater treatment
24 facilities, and park *and* recreational facilities, but does not include
25 the construction of other infrastructure, including, but not limited
26 to, streets and highways, public rail transit, or water resources
27 facilities and infrastructure. For a local agency defined in paragraph
28 (1) of subdivision (f) that operates wastewater facilities, solid waste
29 management facilities, or water recycling facilities, “project” also
30 means the construction of regional and local wastewater treatment
31 facilities, regional and local solid waste facilities, or regional and
32 local water recycling facilities.

33 (2) For a local agency defined in paragraph (2) of subdivision
34 (f), “project” means the construction of regional and local
35 wastewater treatment facilities, regional and local solid waste
36 facilities, regional and local water recycling facilities, or fire
37 protection facilities.

38 (3) For a local agency defined in paragraph (3) of subdivision
39 (f), “project” means a transit capital project, but does not include
40 state highway construction or local street and road projects. *project*

1 *that begins a project solicitation on or after January 1, 2015. A*
2 *“project,” as defined by this paragraph, that begins the solicitation*
3 *process before January 1, 2015, is subject to Article 6.8*
4 *(commencing with Section 20209.5) of Chapter 1. “Project,” as*
5 *defined by this paragraph, does not include state highway*
6 *construction or local street and road projects.*

7 22162. (a) Except as provided in subdivision (b), and
8 notwithstanding any other law, a local agency, with approval of
9 its governing body, may procure design-build contracts for public
10 works projects in excess of one million dollars (\$1,000,000),
11 awarding the contract either the low bid or the best value, provided
12 that this article shall not apply to any projects on the state highway
13 system.

14 (b) ~~For~~ *When a local agency described in paragraph (3) of*
15 *subdivision (f) of Section 22161 awards a contract for the*
16 *acquisition and installation of technology applications or*
17 *surveillance equipment designed to enhance safety, disaster*
18 *preparedness, and homeland security efforts, there shall be no cost*
19 *threshold and the local agency described in paragraph (3) of*
20 *subdivision (f) of Section 22161 may award the contract the*
21 *contract may be awarded to the lowest responsible bidder or by*
22 *using the best value method.*

23 (c) The local agency shall develop guidelines for a standard
24 organizational conflict-of-interest policy, consistent with applicable
25 law, regarding the ability of a person or entity, that performs
26 services for the local agency relating to the solicitation of a
27 design-build project, to submit a proposal as a design-build entity,
28 or to join a design-build team. This conflict-of-interest policy shall
29 apply to each local agency entering into design-build contracts
30 authorized under this chapter.

31 22164. The procurement process for the design-build projects
32 shall progress as follows:

33 (a) (1) The local agency shall prepare a set of documents setting
34 forth the scope and estimated price of the project. The documents
35 may include, but need not be limited to, the size, type, and desired
36 design character of the project, performance specifications covering
37 the quality of materials, equipment, workmanship, preliminary
38 plans or building layouts, or any other information deemed
39 necessary to describe adequately the local agency's needs. The
40 performance specifications and any plans shall be prepared by a

1 design professional who is duly licensed and registered in
2 California.

3 (2) The documents shall not include a design-build-operate
4 contract for any project. The documents, however, may include
5 operations during a training or transition period but shall not
6 include long-term operations for any project.

7 ~~(b) Based on the documents prepared under subdivision (a), the~~
8 *The* local agency shall prepare and issue a request for qualifications
9 in order to prequalify or short-list the design-build entities whose
10 proposals shall be evaluated for final selection. The request for
11 qualifications shall include, but need not be limited to, the
12 following elements:

13 (1) Identification of the basic scope and needs of the project or
14 contract, the expected cost range, the methodology that will be
15 used by the local agency to evaluate proposals, the procedure for
16 final selection of the design-build entity, and any other information
17 deemed necessary by the local agency to inform interested parties
18 of the contracting opportunity.

19 (2) Significant factors that the local agency reasonably expects
20 to consider in evaluating qualifications, including technical design
21 and construction expertise, acceptable safety record, and all other
22 nonprice-related factors.

23 (3) A standard template request for statements of qualifications
24 prepared by the local agency. In preparing the standard template,
25 the local agency may consult with the construction industry, the
26 building trades and surety industry, and other local agencies
27 interested in using the authorization provided by this article. The
28 template shall require the following information:

29 (A) If the design-build entity is a privately held corporation,
30 limited liability company, partnership, or joint venture, a listing
31 of all of the shareholders, partners, or members known at the time
32 of statement of qualification submission who will perform work
33 on the project.

34 (B) Evidence that the members of the design-build team have
35 completed, or demonstrated the experience, competency, capability,
36 and capacity to complete projects of similar size, scope, or
37 complexity, and that proposed key personnel have sufficient
38 experience and training to competently manage and complete the
39 design and construction of the project, and a financial statement

1 that ensures that the design-build entity has the capacity to
2 complete the project.

3 (C) The licenses, registration, and credentials required to design
4 and construct the project, including, but not limited to, information
5 on the revocation or suspension of any license, credential, or
6 registration.

7 (D) Evidence that establishes that the design-build entity has
8 the capacity to obtain all required payment and performance
9 bonding, liability insurance, and errors and omissions insurance.

10 (E) Information concerning workers' compensation experience
11 history and a worker safety program.

12 (F) If the proposed design-build entity is a corporation, limited
13 liability company, partnership, joint venture, or other legal entity,
14 a copy of the organizational documents or agreement committing
15 to form the organization.

16 (G) An acceptable safety record. A proposer's safety record
17 shall be deemed acceptable if its experience modification rate for
18 the most recent three-year period is an average of 1.00 or less, and
19 its average total recordable injury or illness rate and average lost
20 work rate for the most recent three-year period does not exceed
21 the applicable statistical standards for its business category or if
22 the proposer is a party to an alternative dispute resolution system
23 as provided for in Section 3201.5 of the Labor Code.

24 (4) (A) The information required under this subdivision shall
25 be certified under penalty of perjury by the design-build entity and
26 its general partners or joint venture members.

27 (B) Information required under this subdivision that is not
28 otherwise a public record under the California Public Records Act
29 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
30 Title 1 of the Government Code) shall not be open to public
31 inspection.

32 (c) A design-build entity shall not be prequalified or shortlisted
33 unless the entity provides an enforceable commitment to the local
34 agency that the entity and its subcontractors at every tier will use
35 a skilled and trained workforce to perform all work on the project
36 or contract that falls within an apprenticeable occupation in the
37 building and construction trades.

38 (1) For purposes of this subdivision:

1 (A) “Apprenticeable occupation” means an occupation for which
2 the chief had approved an apprenticeship program pursuant to
3 Section 3075 of the Labor Code prior to January 1, 2014.

4 (B) “Skilled and trained workforce” means a workforce that
5 meets all of the following conditions:

6 (i) All the workers are either skilled journeypersons or
7 apprentices registered in an apprenticeship program approved by
8 the Chief of the Division of Apprenticeship Standards.

9 (ii) (I) As of January 1, 2016, at least 20 percent of the skilled
10 ~~journey persons~~ *journeypersons* employed to perform work on the
11 contract or project by the entity and each of its subcontractors at
12 every tier are graduates of an apprenticeship program for the
13 applicable occupation that was either approved by the Chief of the
14 Division of Apprenticeship Standards pursuant to Section 3075 of
15 the Labor Code or located outside California and approved for
16 federal purposes pursuant to the apprenticeship regulations adopted
17 by the federal Secretary of Labor.

18 (II) As of January 1, 2017, at least 30 percent of the skilled
19 ~~journey persons~~ *journeypersons* employed to perform work on the
20 contract or project by the entity and each of its subcontractors at
21 every tier are graduates of an apprenticeship program for the
22 applicable occupation that was either approved by the Chief of the
23 Division of Apprenticeship Standards pursuant to Section 3075 of
24 the Labor Code or located outside California and approved for
25 federal purposes pursuant to the apprenticeship regulations adopted
26 by the federal Secretary of Labor.

27 (III) As of January 1, 2018, at least 40 percent of the skilled
28 ~~journey persons~~ *journeypersons* employed to perform work on the
29 contract or project by the entity and each of its subcontractors at
30 every tier are graduates of an apprenticeship program for the
31 applicable occupation that was either approved by the Chief of the
32 Division of Apprenticeship Standards pursuant to Section 3075 of
33 the Labor Code or located outside California and approved for
34 federal purposes pursuant to the apprenticeship regulations adopted
35 by the federal Secretary of Labor.

36 (IV) As of January 1, 2019, at least 50 percent of the skilled
37 ~~journey persons~~ *journeypersons* employed to perform work on the
38 contract or project by the entity and each of its subcontractors at
39 every tier are graduates of an apprenticeship program for the
40 applicable occupation that was either approved by the Chief of the

1 Division of Apprenticeship Standards pursuant to Section 3075 of
2 the Labor Code or located outside California and approved for
3 federal purposes pursuant to the apprenticeship regulations adopted
4 by the federal Secretary of Labor.

5 (V) As of January 1, 2020, at least 60 percent of the skilled
6 ~~journey persons~~ *journeypersons* employed to perform work on the
7 contract or project by the entity and each of its subcontractors at
8 every tier are graduates of an apprenticeship program for the
9 applicable occupation that was either approved by the Chief of the
10 Division of Apprenticeship Standards pursuant to Section 3075 of
11 the Labor Code or located outside California and approved for
12 federal purposes pursuant to the apprenticeship regulations adopted
13 by the federal Secretary of Labor.

14 (iii) For an apprenticeable occupation in which no apprenticeship
15 program had been approved by the chief prior to January 1, 1995,
16 up to one-half of the graduation percentage ~~requirement in~~
17 ~~subclause (F)~~ *requirements* of clause (ii) may be satisfied by skilled
18 *journeypersons* who commenced working in the apprenticeable
19 occupation prior to the chief's approval of an apprenticeship
20 program for that occupation in the county in which the project is
21 located.

22 (C) "Skilled ~~journey person~~" *journeyperson*" means a worker
23 who either:

24 (i) Graduated from an apprenticeship program for the applicable
25 occupation that was approved by the chief or located outside
26 California and approved for federal purposes pursuant to the
27 apprenticeship regulations adopted by the federal Secretary of
28 Labor.

29 (ii) Has at least as many hours of on-the-job experience in the
30 applicable occupation as would be required to graduate from an
31 apprenticeship program for the applicable occupation that is
32 approved by the chief.

33 (2) An entity's commitment that a skilled and trained workforce
34 will be used to perform the project or contract may be established
35 by any of the following:

36 (A) The entity's agreement with the local agency that the entity
37 and its subcontractors at every tier will comply with the
38 requirements of this subdivision and that the entity will provide
39 the local agency with evidence, on a monthly basis while the
40 project or contract is being performed, that the entity and its

1 subcontractors are complying with the requirements of this
2 subdivision.

3 (B) If the local agency has entered into a project labor agreement
4 that will bind all contractors and subcontractors performing work
5 on the project or contract and that includes the requirements of
6 this subdivision, the entity's agreement that it will become a party
7 to that project labor agreement.

8 (C) Evidence that the entity has entered into a project labor
9 agreement that includes the requirements of this subdivision and
10 that will bind the entity and all its subcontractors at every tier
11 performing the project or contract.

12 (d) Based on the documents prepared as described in subdivision
13 (a), the local agency shall prepare a request for proposals that
14 invites prequalified or short-listed entities to submit competitive
15 sealed proposals in the manner prescribed by the local agency.
16 The request for proposals shall include, but need not be limited
17 to, the following elements:

18 (1) Identification of the basic scope and needs of the project or
19 contract, the estimated cost of the project, the methodology that
20 will be used by the local agency to evaluate proposals, whether
21 the contract will be awarded on the basis of low bid or best value,
22 and any other information deemed necessary by the local agency
23 to inform interested parties of the contracting opportunity.

24 (2) Significant factors that the local agency reasonably expects
25 to consider in evaluating proposals, including, but not limited to,
26 cost or price and all nonprice-related factors.

27 (3) The relative importance or the weight assigned to each of
28 the factors identified in the request for proposals.

29 (4) Where a best value selection method is used, the local agency
30 may reserve the right to request proposal revisions and hold
31 discussions and negotiations with responsive proposers, in which
32 case the local agency shall so specify in the request for proposals
33 and shall publish separately or incorporate into the request for
34 proposals applicable procedures to be observed by the local agency
35 to ensure that any discussions or negotiations are conducted in
36 good faith.

37 (e) For those projects utilizing low bid as the final selection
38 method, the competitive bidding process shall result in lump-sum
39 bids by the prequalified or short-listed design-build entities, and

1 awards shall be made to the design-build entity that is the lowest
2 responsible bidder.

3 (f) For those projects utilizing best value as a selection method,
4 the design-build competition shall progress as follows:

5 (1) Competitive proposals shall be evaluated by using only the
6 criteria and selection procedures specifically identified in the
7 request for proposals. The following minimum factors, however,
8 shall be weighted as deemed appropriate by the local agency:

9 (A) Price, unless a stipulated sum is specified.

10 (B) Technical design and construction expertise.

11 (C) Life-cycle costs over 15 or more years.

12 (2) Pursuant to subdivision (d), the local agency may hold
13 discussions or negotiations with responsive proposers using the
14 process articulated in the local agency's request for proposals.

15 (3) When the evaluation is complete, the responsive proposers
16 shall be ranked based on a determination of value provided,
17 provided that no more than three proposers are required to be
18 ranked.

19 (4) The award of the contract shall be made to the responsible
20 design-build entity whose proposal is determined by the local
21 agency to have offered the best value to the public.

22 (5) Notwithstanding any other provision of this code, upon
23 issuance of a contract award, the local agency shall publicly
24 announce its award, identifying the design-build entity to which
25 the award is made, along with a statement regarding the basis of
26 the award.

27 (6) The statement regarding the local agency's contract award,
28 described in paragraph (5), and the contract file shall provide
29 sufficient information to satisfy an external audit.

30 22165. (a) The design-build entity shall provide payment and
31 performance bonds for the project in the form and in the amount
32 required by the local agency, and issued by a California admitted
33 surety. The amount of the payment bond shall not be less than the
34 amount of the performance bond.

35 (b) The design-build contract shall require errors and omissions
36 insurance coverage for the design elements of the project.

37 (c) The local agency shall develop a standard form of payment
38 and performance bond for its design-build projects.

39 22166. (a) The local agency, in each design-build request for
40 proposals, may identify specific types of subcontractors that must

1 be included in the design-build entity statement of qualifications
2 and proposal. All construction subcontractors that are identified
3 in the proposal shall be afforded all the protections of Chapter 4
4 (commencing with Section 4100) of Part 1.

5 (b) Following award of the design-build contract, the
6 design-build entity shall proceed as follows in awarding
7 construction subcontracts with a value exceeding one-half of 1
8 percent of the contract price allocable to construction work:

9 (1) Provide public notice of availability of work to be
10 subcontracted in accordance with the publication requirements
11 applicable to the competitive bidding process of the local agency,
12 including a fixed date and time on which qualifications statements,
13 bids, or proposals will be due.

14 (2) Establish reasonable qualification criteria and standards.

15 (3) Award the subcontract either on a best value basis or to the
16 lowest responsible bidder. The process may include prequalification
17 or short-listing. The foregoing process does not apply to
18 construction subcontractors listed in the original proposal.
19 Subcontractors awarded construction subcontracts under this
20 subdivision shall be afforded all the protections of Chapter 4
21 (commencing with Section 4100) of Part 1.

22 22167. (a) If the local agency elects to award a project pursuant
23 to this article, retention proceeds withheld by the local agency
24 from the design-build entity shall not exceed 5 percent if a
25 performance and payment bond, issued by an admitted surety
26 insurer, is required in the solicitation of bids.

27 (b) In a contract between the design-build entity and a
28 subcontractor, and in a contract between a subcontractor and any
29 subcontractor thereunder, the percentage of the retention proceeds
30 withheld may not exceed the percentage specified in the contract
31 between the local agency and the design-build entity. If the
32 design-build entity provides written notice to any subcontractor
33 that is not a member of the design-build entity, prior to or at the
34 time the bid is requested, that a bond may be required and the
35 subcontractor subsequently is unable or refuses to furnish a bond
36 to the design-build entity, then the design-build entity may withhold
37 retention proceeds in excess of the percentage specified in the
38 contract between the local agency and the design-build entity from
39 any payment made by the design-build entity to the subcontractor.

22168. Nothing in this article affects, expands, alters, or limits any rights or remedies otherwise available at law.

22169. This chapter shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 15. Section 37.2 is added to the San Diego Unified Port District Act (Chapter 67 of the First Extraordinary Session of the Statutes of 1962), to read:

Sec. 37.2. (a) Notwithstanding subdivision (a) of Section 37 of this act or any other law, the district, with approval of the board of commissioners, may procure design-build contracts for the construction of a building or buildings and improvements directly related to the construction of a building or buildings that exceed one million dollars (\$1,000,000) using the design-build procurement process described in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code.

(b) For the purposes of this section, except where the context otherwise requires, all references in Chapter 4 (commencing with Section 22160) of Part 3 of Division 2 of the Public Contract Code to “local agency” shall mean the San Diego Unified Port District.

SEC. 16. Section 6 of Chapter 2 of the Second Extraordinary Session of the Statutes of 2009, is repealed.

~~Sec. 6. (a) Notwithstanding any other provision of law, the peer review committee established pursuant to subdivision (d) of Section 6803 of the Public Contract Code shall continue to operate until it has fulfilled the reporting requirements of this section.~~

~~(b) The committee shall conduct an evaluation of all transportation projects using the design-build method of construction procurement authorized under Chapter 6.5 (commencing with Section 6800) of Part 1 of Division 2 of the Public Contract Code.~~

~~(c) The evaluation pursuant to subdivision (b) shall examine the procurement method, comparing those projects using low bid and best value, and shall consider whether the projects were on time and on budget. The evaluation shall also compare the design-build projects to similar transportation projects that used the design-bid-build method of construction procurement.~~

~~(d) (1) The California Transportation Commission shall submit a midterm report of its findings to the Legislature no later than June 30, 2012.~~

1 ~~(2) The California Transportation Commission shall submit a~~
2 ~~final report of its findings to the Legislature no later than June 30,~~
3 ~~2015.~~

4 ~~SEC. 14.~~

5 ~~SEC. 17.~~ (a) Due to the unique circumstances of the Marin
6 Healthcare District, the Legislature hereby finds and declares that
7 a general statute cannot be made applicable within the meaning
8 of Section 16 of Article IV of the California Constitution.
9 Therefore, the special legislation contained in Section 4 of this act
10 is applicable only to the Marin Healthcare District.

11 (b) *Due to the unique circumstances of, and the potential costs*
12 *faced by, the San Diego Unified Port District, the Legislature*
13 *hereby finds and declares that a general statute cannot be made*
14 *applicable within the meaning of Section 16 of Article IV of the*
15 *California Constitution. Therefore, the special legislation contained*
16 *in Section 15 of this act is applicable only to the San Diego Unified*
17 *Port District.*

18 ~~SEC. 15.~~

19 ~~SEC. 18.~~ No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.